

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL J. BOND and LISA GREEN	)	Case No. 07cv0744-BTM (BLM)
BOND,	)	
	)	<b>CASE MANAGEMENT CONFERENCE</b>
Plaintiffs,	)	<b>ORDER REGULATING DISCOVERY AND</b>
	)	<b>OTHER PRETRIAL PROCEEDINGS</b>
v.	)	
	)	(Fed. R. Civ. P. 16)
COUNTRY COACH, INC., HOLLAND	)	(Local Rule 16.1)
MOTOR HOMES, and DOES 1 through	)	(Fed. R. Civ. P. 26)
10, inclusive,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a telephonic Case Management Conference was held on June 28, 2007 at 1:30 p.m. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

**IT IS HEREBY ORDERED:**

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **August 31, 2007.**

2. Each party shall serve on all opposing parties a list of experts, whom that party expects to call at trial, on or before **September 28, 2007.** Each party may supplement its designation in

1 response to the other party's designation no later than October 12,  
2 2007. Expert designations shall include the name, address, and  
3 telephone number of each expert and a reasonable summary of the  
4 testimony the expert is expected to provide. The list shall also  
5 include the normal rates the expert charges for deposition and trial  
6 testimony.

7 The parties must identify any person who may be used at trial to  
8 present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules  
9 of Evidence. This requirement is not limited to retained experts.

10 **Please be advised that failure to comply with this section or any**  
11 **other discovery order of the Court may result in the sanctions provided**  
12 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**  
13 **of experts or other designated matters in evidence.**

14 3. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)  
15 shall be served on all parties on or before November 16, 2007. Any  
16 contradictory or rebuttal information shall be disclosed on or before  
17 November 30, 2007. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty  
18 on the parties to supplement the expert disclosures made pursuant to  
19 Fed. R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are  
20 due under Fed. R. Civ. P. 26(a)(3) (discussed below).

21 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)  
22 regarding expert disclosures. Such disclosures shall include an expert  
23 report, all supporting materials, a complete statement of all opinions  
24 to be expressed and the basis and reasons therefor, the data or other  
25 information considered by the expert in forming the opinions, any  
26 exhibits to be used as a summary of or support for the opinions, the  
27 qualifications of the witness including a list of all publications  
28 authored by the witness within the preceding ten years, the compensation

1 to be paid for the study and testimony, and a list of other cases in  
2 which the witness has testified as an expert at trial or by deposition  
3 within the preceding four years.

4 This disclosure requirement applies to all persons retained or  
5 specially employed to provide expert testimony, or whose duties as an  
6 employee of the party regularly involve the giving of expert testimony.

7 **Please be advised that failure to comply with this section or any**  
8 **other discovery order of the Court may result in the sanctions provided**  
9 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**  
10 **of experts or other designated matters in evidence.**

11 4. All discovery, other than expert discovery, shall be completed  
12 by all parties on or before January 14, 2008. All expert discovery,  
13 shall be completed by all parties on or before February 4, 2008.  
14 "Completed" means that all discovery under Rules 30-36 of the Federal  
15 Rules of Civil Procedure, and discovery subpoenas under Rule 45, must  
16 be initiated a sufficient period of time in advance of the cut-off date,  
17 so that it may be completed by the cut-off date, taking into account the  
18 times for service, notice, and response as set forth in the Federal  
19 Rules of Civil Procedure.

20 Counsel shall promptly and in good faith meet and confer with  
21 regard to all discovery disputes in compliance with Civil Local Rules  
22 16.5(k) and 26.1(a). All discovery motions shall be filed within thirty  
23 (30) days after counsel have met and conferred and reached an impasse  
24 with regard to any particular discovery issue, but in no event shall  
25 discovery motions be filed more than sixty (60) days after the date upon  
26 which the event giving rise to the discovery dispute occurred. For oral  
27 discovery, the event giving rise to the discovery dispute is the  
28 completion of the transcript of the affected portion of the deposition.

1 For written discovery, the event giving rise to the discovery dispute  
2 is either the service of the response, or, if no response was served,  
3 the initial date the response was due. In addition, all discovery  
4 motions must be filed within thirty (30) days after the close of  
5 discovery.

6 5. All other pretrial motions must be filed on or before March  
7 3, 2008. Motions will not be heard or calendared unless counsel for the  
8 moving party has obtained a motion hearing date from the law clerk of  
9 the judge who will hear the motion. Be advised that the parties must  
10 file their moving papers within three (3) days of receiving their motion  
11 hearing date from the Court. Failure to timely request a motion date  
12 may result in the motion not being heard. Motions will not be heard  
13 unless you have obtained a date from the judge's law clerk.

14 Questions regarding this case should be directed to the judge's law  
15 clerk. The Court draws the parties' attention to Local Rule 7.1(e)(4)  
16 which requires that the parties allot additional time for service of  
17 motion papers by mail. Papers not complying with this rule shall not  
18 be accepted for filing.

19 Briefs or memoranda in support of or in opposition to any pending  
20 motion shall not exceed twenty-five (25) pages in length without leave  
21 of the judge who will hear the motion. No reply memorandum shall exceed  
22 ten (10) pages without leave of the judge who will hear the motion.

23 6. A Mandatory Settlement Conference shall be conducted on  
24 September 26, 2007 at 9:30 a.m. in the chambers of Magistrate Judge  
25 Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA  
26 92101. All discussions at the Mandatory Settlement Conference will be  
27 informal, off the record, privileged, and confidential. Counsel for any  
28 non-English speaking party is responsible for arranging for the

1 appearance of an interpreter at the conference.

2 a. **Personal Appearance of Parties Required:** All parties,  
3 adjusters for insured defendants, and other representatives of a party  
4 having full and complete authority to enter into a binding settlement,  
5 as well as the principal attorneys responsible for the litigation, must  
6 be present **in person** and legally and factually prepared to discuss  
7 settlement of the case. Counsel appearing without their clients  
8 (whether or not counsel has been given settlement authority) will be  
9 cause for immediate imposition of sanctions and may also result in the  
10 immediate termination of the conference.

11 Unless there are extraordinary circumstances, persons required to  
12 attend the conference pursuant to this Order shall not be excused from  
13 personal attendance. **Requests for excuse from attendance for extraordi-**  
14 **nary circumstances shall be made in writing at least seventy-two (72)**  
15 **hours prior to the conference.** Failure to appear **in person** at the  
16 Mandatory Settlement Conference will be grounds for sanctions.

17 b. **Full Settlement Authority Required:** In addition to  
18 counsel who will try the case, a party or party representative with full  
19 settlement authority<sup>1</sup> must be present for the conference. In the case  
20 of a corporate entity, an authorized representative of the corporation  
21 \_\_\_\_\_

22 <sup>1</sup> "Full settlement authority" means that the individuals at the settlement  
23 conference must be authorized to explore settlement options fully and to agree at that  
24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph  
25 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered  
26 discretion and authority" to change the settlement position of a party. Pitman v.  
27 Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring  
28 a person with unlimited settlement authority to attend the conference contemplates that  
the person's view of the case may be altered during the face to face conference. Id.  
at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's  
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 who is not retained outside counsel must be present and must have  
2 discretionary authority to commit the company to pay an amount up to the  
3 amount of the Plaintiff's prayer (excluding punitive damages prayers).  
4 The purpose of this requirement is to have representatives present who  
5 can settle the case during the course of the conference without  
6 consulting a superior. Counsel for a government entity may be excused  
7 from this requirement so long as the government attorney who attends the  
8 Mandatory Settlement Conference (1) has primary responsibility for  
9 handling the case, and (2) may negotiate settlement offers which the  
10 attorney is willing to recommend to the government official having  
11 ultimate settlement authority.

12 c. **Confidential Settlement Statements Required:** No later  
13 than **September 19, 2007**, the parties shall submit directly to Magistrate  
14 Judge Major's chambers confidential settlement statements no more than  
15 five (5) pages in length. **These confidential statements shall not be**  
16 **filed or served on opposing counsel.** Each party's confidential  
17 statement must include the following:

18 (i) A brief description of the case, the claims and/or  
19 counterclaims asserted, and the applicable defenses or position  
20 regarding the asserted claims;

21 (ii) A specific and current demand or offer for  
22 settlement addressing all relief or remedies sought. If a specific  
23 demand or offer for settlement cannot be made at the time the brief is  
24 submitted, then the reasons therefore must be stated along with a  
25 statement as to when the party will be in a position to state a demand  
26 or make an offer; and

27 (iii) A brief description of any previous settlement  
28 negotiations, mediation sessions, or mediation efforts.

1 General statements that a party will "negotiate in good faith" is  
2 not a specific demand or offer contemplated by this Order. It is  
3 assumed that all parties will negotiate in good faith.

4 d. **Requests to Continue a Mandatory Settlement Conference:**

5 Any request to continue the Mandatory Settlement Conference or request  
6 for relief from any of the provisions or requirements of this Order must  
7 be sought by a **written ex parte application**. The application must (1)  
8 be supported by a declaration of counsel setting forth the reasons and  
9 justifications for the relief requested, (2) confirm compliance with  
10 Civil Local Rule 26.1, and (3) report the position of opposing counsel  
11 or any unrepresented parties subject to the Order. **Absent extraordinary**  
12 **circumstances, requests for continuances will not be considered unless**  
13 **submitted in writing no less than seven (7) days prior to the scheduled**  
14 **conference.**

15 **If the case is settled in its entirety before the scheduled date**  
16 **of the conference, counsel and any unrepresented parties must still**  
17 **appear in person, unless a written joint motion confirming the complete**  
18 **settlement of the case is submitted no less than twenty-four (24) hours**  
19 **before the scheduled conference.**

20 7. The parties must comply with the pretrial disclosure  
21 requirements of Fed. R. Civ. P. 26(a)(3) no later than **June 11, 2008**.  
22 The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance  
23 of the required disclosures.

24 **Please be advised that failure to comply with this section or any**  
25 **other discovery order of the Court may result in the sanctions provided**  
26 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**  
27 **of designated matters in evidence.**

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1        8. No Memoranda of Contentions of Fact and Law are to be filed  
2 except in a bench trial. In that case, counsel shall serve on each  
3 other and file with the Clerk of the Court their Memoranda of Conten-  
4 tions of Fact and Law in compliance with Local Rule 16.1(f)(2) on or  
5 before June 11, 2008.

6        9. Counsel shall meet and confer regarding the contents of the  
7 pretrial order on or before June 18, 2008.

8        10. Counsel shall comply with the attached Order Setting Form of  
9 Pretrial Order in preparing the pretrial order.

10       11. The proposed final pretrial conference order, including  
11 written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)  
12 pretrial disclosures, shall be prepared, served, and submitted to the  
13 Clerk's Office on or before June 25, 2008. Such objections shall comply  
14 with the requirements of Fed. R. Civ. P. 26(a)(3). **Please be advised**  
15 **that the failure to file written objections to a party's pretrial**  
16 **disclosures may result in the waiver of such objections, with the**  
17 **exception of those made pursuant to Rules 402 (relevance) and 403**  
18 **(prejudice, confusion or waste of time) of the Federal Rules of**  
19 **Evidence.**

20       12. The final pretrial conference is scheduled on the calendar of  
21 the Honorable Barry Ted Moskowitz on July 2, 2008 at 4:00 p.m. The  
22 trial date will be assigned by Judge Moskowitz at the pretrial

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1 conference.

2 13. The dates and times set forth herein will not be modified  
3 except for good cause shown.

4 14. Plaintiff's(s') counsel shall serve a copy of this order on  
5 all parties that enter this case hereafter.

6 DATED: June 29, 2007

7 

8 BARBARA L. MAJOR  
9 United States Magistrate Judge

10  
11 COPY TO:

12 HONORABLE BARRY TED MOSKOWITZ  
13 UNITED STATES DISTRICT JUDGE

14 ALL COUNSEL  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL J. BOND and LISA GREEN	)	Civil No. 07cv0744-BTM (BLM)
BOND,	)	
	)	<b>ORDER SETTING FORM</b>
Plaintiffs,	)	<b>OF PRETRIAL ORDER</b>
	)	
v.	)	
	)	
COUNTRY COACH, INC., HOLLAND	)	
MOTOR HOMES, and DOES 1 through	)	
10, inclusive,	)	
	)	
Defendants.	)	
_____	)	

In order to identify the claims to be tried and eliminate delay and surprise at trial, the Court enters the following pretrial order pursuant to Fed. R. Civ. P. 16. This order replaces the requirements under Local Rule 16.1(f)(2). No Memoranda of Contentions of Fact and Law are to be filed except in a bench trial.

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1 The parties shall meet and confer and prepare a proposed pretrial  
2 order containing the following:

3 1. A statement to be read to the jury, not in excess of one page,  
4 of the nature of the case and the claims and defenses.

5 2. A list of the causes of action to be tried, referenced to the  
6 Complaint and Counterclaim. For each cause of action, the order shall  
7 succinctly list the elements of the claim, damages and any defenses.  
8 A cause of action in the Complaint or Counterclaim which is not listed  
9 shall be dismissed with prejudice.

10 3(a). A list of each witness that counsel actually expects to  
11 call at trial with a brief statement, not exceeding four sentences, of  
12 the substance of the witnesses' testimony.

13 3(b). A list of expert witness(es) that counsel actually  
14 expects to call at trial with a brief statement, not exceeding four  
15 sentences, of the substance of the expert witnesses' testimony.

16 3(c). A list of additional witnesses including experts that  
17 counsel do not expect to call at this time but reserve the right to call  
18 at trial along with a brief statement, not exceeding four sentences, of  
19 the substance of the witnesses' testimony.

20 4(a). A list of all exhibits that counsel actually expect to  
21 offer at trial with a one-sentence description of the exhibit.

22 4(b). A list of all other exhibits that counsel do not expect  
23 to offer at this time but reserve the right to offer if necessary at  
24 trial with a one-sentence description of the exhibit.

25 5. A statement of all facts to which the parties stipulate. This  
26 statement shall be on a separate page and will be read to and provided  
27 to the jury. The parties are directed to meet with the assigned  
28 magistrate judge to work out as many stipulations of fact as possible.

7. The parties shall prepare proposed jury instructions (if trial by jury) on the substantive claims, damages and defenses. One set of proposed instructions shall be given to the court. If the parties disagree on an instruction, the alternative instructions shall be submitted.

The Court encourages the parties to consult with the assigned magistrate judge to work out any problems in preparation of the proposed pretrial order. The Court will entertain any questions concerning the conduct of the trial at the pretrial conference.

DATED: June 29, 2007

BARBARA L. MAJOR  
United States Magistrate Judge

HONORABLE BARRY TED MOSKOWITZ  
UNITED STATES DISTRICT JUDGE